

Part III

Administrative, Procedural, and Miscellaneous

26 CFR 601.601: Rules and regulations.
(Also: Part I, §§ 301, 305)

Revenue Procedure 2010-12

SECTION 1. PURPOSE

Rev. Proc. 2009-15, 2009-4 I.R.B. 356, amplifying and superseding Rev. Proc. 2008-68, 2008-52 I.R.B. 1373, provides temporary guidance regarding certain stock distributions by publicly traded real estate investment trusts (REITs) and regulated investment companies (RICs). This revenue procedure amplifies and supersedes Rev. Proc. 2009-15.

SECTION 2. BACKGROUND

.01 Section 305(a) of the Internal Revenue Code (“Code”) provides that, except as otherwise provided in § 305, gross income does not include the amount of any distribution of the stock of a corporation made by such corporation to its shareholders with respect to its stock.

.02 Section 305(b)(1) provides that § 305(a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which § 301 applies, if the distribution is, at the election of any of the shareholders (whether exercised before or after the declaration thereof), payable either in its stock or in property.

.03 Section 305(b)(2) provides that § 305(a) shall not apply to a distribution by a corporation of its stock, and the distribution shall be treated as a distribution of property to which § 301 applies, if the distribution (or a series of distributions of which such distribution is one) has the result of the receipt of property by some shareholders, and an increase in the proportionate interests of other shareholders in the assets or earnings and profits of the corporation.

.04 Section 1.305-2(a) of the Income Tax Regulations provides that under § 305(b)(1), if any shareholder has the right to an election or option with respect to whether a distribution shall be made either in money or any other property, or in stock or rights to acquire stock of the distributing corporation, then, with respect to all shareholders, the distribution of stock or rights to acquire stock is treated as a distribution of property to which § 301 applies regardless of--

(1) Whether the distribution is actually made in whole or in part in stock or in stock rights;

(2) Whether the election or option is exercised or exercisable before or after the declaration of the distribution;

(3) Whether the declaration of the distribution provides that the distribution will be made in one medium unless the shareholder specifically requests payment in the other;

(4) Whether the election governing the nature of the distribution is provided in the declaration of the distribution or in the corporate charter or arises from the circumstances of the distribution; or

(5) Whether all or part of the shareholders have the election.

.05 Section 1.305-1(b)(2) provides that where a corporation which regularly distributes its earnings and profits, such as a RIC, declares a dividend pursuant to which the shareholders may elect to receive either money or stock of the distributing corporation of equivalent value, the amount of the distribution of the stock received by any shareholder electing to receive stock will be considered to equal the amount of the money which could have been received instead.

.06 Section 852(a) provides, in part, that except for § 852(c), the provisions of part I of subchapter M of Chapter 1 shall not apply to a RIC for a taxable year unless the deduction for dividends paid (as defined in § 561 with certain modifications) for the taxable year equals or exceeds a specified amount.

.07 Section 857(a) provides, in part, that except for subsection (d) of § 857 and subsection (g) of § 856, the provisions of part II of subchapter M of Chapter 1 shall not apply to a REIT for a taxable year unless the deduction for dividends paid during the year (as defined in § 561 with certain modifications) for the taxable year equals or exceeds a specified amount.

.08 Section 562(c) provides that the amount of any distribution shall not be considered as a dividend for purposes of computing the dividends paid deduction under § 561, unless such distribution is pro rata, with no preference to any share of stock as compared with other shares of the same class, and with no preference to one class of stock as compared with another class except to the extent that the former is entitled (without reference to waivers of their rights by shareholders) to such preference.

.09 Section 852(b)(7) provides that any dividend declared by a RIC in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed to have been received by each shareholder on December 31 of such calendar year, and to have been paid by the RIC on December 31 of such calendar year (or, if earlier, as provided in § 855). The preceding sentence shall apply only if such dividend is actually paid by the RIC during January of the following calendar year.

.10 Section 855 provides, in relevant part, that if a RIC declares a dividend prior to the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the RIC elects in such return, be generally considered as having been paid during such taxable year. Except as provided in § 852(b)(7), the amounts distributed pursuant to

this section shall be treated as received by the shareholder in the taxable year in which the distribution is made.

.11 Section 857(b)(9) provides that any dividend declared by a REIT in October, November, or December of any calendar year and payable to shareholders of record on a specified date in such a month shall be deemed to have been received by each shareholder on December 31 of such calendar year, and to have been paid by the REIT on December 31 of such calendar year (or, if earlier, as provided in § 858). The preceding sentence shall apply only if such dividend is actually paid by the REIT during January of the following calendar year.

.12 Section 858 provides, in relevant part, that if a REIT declares a dividend before the time prescribed by law for the filing of its return for a taxable year (including the period of any extension of time granted for filing such return), and distributes the amount of such dividend to shareholders in the 12-month period following the close of such taxable year and not later than the date of the first regular dividend payment made after such declaration, the amount so declared and distributed shall, to the extent the REIT elects in such return, be generally considered as having been paid during such taxable year. Except as provided in § 857(b)(9), the amounts distributed pursuant to § 858 shall be treated as received by the shareholder in the taxable year in which the distribution is made.

.13 If there is a determination with respect to a RIC or a REIT that results in an adjustment that produces a tax deficiency for any taxable year, there are procedures under § 860 that enable the RIC or REIT to make a current distribution to its

shareholders (a “deficiency dividend”) that increases the RIC’s or REIT’s dividends-paid deduction for the earlier year of the deficiency.

SECTION 3. SCOPE AND APPLICATION

.01 In general. If a corporation qualifies as a RIC or as a REIT under part I or II, respectively, of subchapter M of the Code and makes a distribution that meets all of the requirements of Section 3.02 of this revenue procedure—

(1) The Internal Revenue Service will treat the distribution of stock as a distribution of property to which § 301 applies by reason of § 305(b), and the amount of such distribution of stock will be considered to equal the amount of the money which could have been received instead; and

(2) If some shareholders receive a combination of stock and money that differs from the combination received by other shareholders and if the fair market value of the stock on the date of distribution differs from the amount of money which could have been received instead, those differences do not cause the distribution to be a preferential dividend under § 562(c).

.02 Requirements for distribution.

(1) The distribution is made by the corporation to its shareholders with respect to its stock;

(2) Stock of the corporation is publicly traded on an established securities market in the United States;

(3) The distribution is declared on or before December 31, 2012, with respect to a taxable year ending on or before December 31, 2011, whether declared and

distributed prior to the close of the taxable year or whether declared and distributed pursuant to the provisions of § 855, § 852(b)(7), § 858, § 857(b)(9), or § 860;

(4) Pursuant to such declaration each shareholder may elect to receive the shareholder's entire entitlement under the declaration in either money or stock of the distributing corporation of equivalent value subject to a limitation on the amount of money to be distributed in the aggregate to all shareholders (the "Cash Limitation"), provided that--

(a) such Cash Limitation is not less than 10% of the aggregate declared distribution, and

(b) if too many shareholders elect to receive money, each shareholder electing to receive money will receive a pro rata amount of money corresponding to the shareholder's respective entitlement under the declaration, but in no event will any shareholder electing to receive money receive less than 10% of the shareholder's entire entitlement under the declaration in money;

(5) The calculation of the number of shares to be received by any shareholder will be determined, over a period of up to two weeks ending as close as practicable to the payment date, based upon a formula utilizing market prices that is designed to equate in value the number of shares to be received with the amount of money that could be received instead. For purposes of applying subsection (4) of this Section 3.02, the value of the shares to be distributed shall be determined by using the formula described in the preceding sentence; and

(6) With respect to any shareholder participating in a dividend reinvestment plan (“DRIP”), the DRIP applies only to the extent that, in the absence of the DRIP, the shareholder would have received the distribution in money under subsection (4) of this Section 3.02.

SECTION 4. EFFECT ON OTHER DOCUMENTS

Rev. Proc. 2009-15 is amplified and superseded.

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective with respect to distributions declared on or after January 1, 2008.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is T. Ian Russell of the Office of Associate Chief Counsel (Corporate). For further information regarding this revenue procedure contact T. Ian Russell on (202) 622-7550 (not a toll free call).